

**STATEMENT OF COMMISSIONER CARL WOOD
INTRODUCING ITEMS 25 AND 31,
THAT IMPLEMENT PUBLIC UTILITY CODE SECTION 761.3
AS ENACTED BY SB 39XX IN APRIL 2002**

COLLEAGUES.

It is almost four years since the Energy Crisis gripped California and undermined our economy, our government and our peoples' sense of well-being.

At that time some of us stated what the whole world now knows – that withholding, gaming and manipulation of supply was at the root of the crisis. The revelations of the Senate Select Committee chaired by Senator Dunn, the Enron memos, the monumental investigations and disclosures by the California Parties in the FERC refund proceeding, and the doggedly determined work of our staff in the natural gas litigation with El Paso, in the refund struggles, and in the investigations into powerplant outages and manipulation have established the ruthlessness with which California was plundered, and have revealed the devices used to effect the plundering.

The most dangerous and unsettling aspect of the Energy Crisis was the constant threat of rolling blackouts, as the grid operators at the ISO announced almost continuous system emergencies, curtailments and interruptions – while simultaneously paying – through the instrumentality of DWR -- previously unheard of prices for the electric energy needed to keep the lights on.

In the Spring of 2001, I presided over the rulemaking where the Commission attempted to update its procedures for curtailments of electric service, including how to integrate blackout “exemptions” for critical economic and social facilities into the transmission and distribution grid. The experience was grueling – we had almost ten thousand requests for exemptions, each one more urgent and persuasive than the last. The hospitals, nursing homes and other health care facilities were competing with the Kinder-Morgan Company, which said that if its pipeline system for moving petroleum products were interrupted or curtailed, the economy of the state would implode.

The experience taught me that -- all academic theories aside – shortage of electricity in our advanced society is a catastrophe. Sub-optimal operation of our electric generating facilities that contributes to shortage must be prevented, whether that sub-par operation is the result of innocent error or greed-induced manipulation.

Today we take an important step forward to protect California from repeating that experience, in approving these two items. Recognizing that well-operated and maintained facilities are essential to the public health and safety of California residents and businesses, the Legislature has enlisted us in a significant effort to see that powerplants and equipment are properly operated and maintained. It is time to act.

Items 35 and 37 advance a project begun more than three years ago, when the Legislature and Governor Davis recognized the gravity of the withholding problem and acted to address it. In his state-of-the-state message in January 2001 Governor Davis

ordered the Commission to assign 50 inspectors to California powerplants and issued an Executive Order supporting them. The CPUC powerplant inspections were resisted by the generators; their legal objections to inspections were swiftly rejected by the Supreme Court.

In a more permanent and durable response, Senator Jackie Speier introduced Senate Bill 39 in December 2000 and, in the company of Senator Burton, moved its special session counterpart to enactment in April 2002, over the determined opposition of the merchant generators. Governor Davis supported the bill and signed it promptly. The Legislature included a significant augmentation of the Commission's budget to implement SB 39XX at the CPUC.

SB 39XX applied the full measure of California's authority to regulate physical powerplant facilities to require powerplant owners and operators to operate and maintain their facilities safely and reliably in the public interest under the regulatory control of the CPUC. That basic concept – state regulatory control over physical maintenance and operation enforced by the CPUC – was enacted in SB 39XX and is implemented in part by the General Orders we approve today. The continuing insistence by the Legislature that we take prompt and effective action is confirmed by the letters from Senators Burton, Speier and Bowen that we have received over the past two months encouraging us to act promptly and effectively.

Along the way the legislation evolved into a more complex cooperative relationship between this agency and the Independent System Operator, reflecting the views of leaders in both agencies and the administration that the fragmentation of state authority ought to be overcome through cooperative efforts, while recognizing the superior, constitutional law enforcement authority and rate regulation responsibilities of the CPUC. The task we have been set is unprecedented, but absolutely crucial in the evolving electric energy sector of our economy. We have worked and are working well together. I want to thank **Chairman Michael Kahn** of the ISO and his staff for their collegiality, while reiterating the need for additional cooperative action between our two agencies to reassure Californians that their electrical supply is reliable.

Pursuant to the legislation the CPUC and the ISO jointly established an independent Electric Generation Facilities Standards Committee to adopt operation and maintenance standards. The members are Chairman Kahn, myself serving as Chair and **Glenn Bjorklund**, an industry expert who has given generously of his time and wisdom, and without whom we could not have proceeded.

Staff support for the Committee was provided by **Rich Clark, Mark Ziering, Chuck Magee, Raffi Stepanian** and ALJs **Tim Sullivan, John Thorson and Burt Mattson** here at the Commission, and **Phil Pettengill** from the ISO. Legal Division has given assistance to the Committee through **Joel Perlstein, Cleveland Lee and Fred Harris**.

The job of the Committee is formidable. Grid-connected powerplants have traditionally been operated and maintained in large-scale corporate structures with integrated corporate cultures, systems and controls subject to comprehensive management and public oversight. The mechanisms for accountability both within the

operating corporation and to the public for outcomes were clear. However, when California divested its grid-connected powerplants to a multitude of owners and operators, each with its own routines, employment practices, cost controls, operating parameters and revenue objectives, the coherent corporate mechanisms for accountability were weakened and lost. California suffered greatly as a result.

The task we faced on the Committee was to begin the process of restoring accountability by adopting standards for performance in the maintenance and operation of the grid-connected powerplants California relies on, in an environment of diffused responsibility and ineffective or non-existent mechanisms for accountability. The task we face at the Commission is implementing those standards effectively for a diverse industry whose performance record in the past few years is uneven, to put it charitably.

So far, the Committee has approved and forwarded to the Commission Logbook Standards for Thermal Power Plants (approved a year ago on April 2, 2003), Maintenance Standards for Generators (May 16, 2003), and General Duty Standards for Operation and Maintenance (June 6, 2003). On April 7 the Committee met to consider draft Standards for Powerplant Operation, that have been under development for nearly six months. Based on a schedule developed by staff, I expect to see those forwarded to the Commission in July, for decision by September.

In deciding how these standards should be implemented and enforced, the Commission opened a rulemaking proceeding (R.02-11-039) in November 2002. Over 100 persons or entities have appeared in this proceeding. PHCs and workshops were conducted by the assigned Administrative Law Judges **John Thorson** and **Burt Mattson**. After circulation of informal drafts and receipt of comments, a formal Draft General Order was circulated for official comment on October 2, 2003.

President Peevey issued alternate decisions last months, which have been the basis for intensive discussions and revisions. I am happy to say that these discussion have resulted in documents that both President Peevey and I can support, which are Agenda Items 35a and 37a. I want to commend **Larry Chaset and Bill Julian from my staff** for their yeoman's work in reconciling the two approaches.

The important differences from the original ALJ PDs that I supported and sponsored are in tone and approach. Both President Peevey and I are determined to see an effective and enforceable state program. We are both committed to pursuing public health and safety without federal interference or pre-emption. President Peevey has made an important overture to the FERC, in directing the Executive Director to forward the standards we approve today to the CAISO for inclusion in its tariff approved by FERC. I recognize the importance of this gesture, although my own view is that FERC involvement should be through a delegation of authority to us pursuant to the Federal Power Act's provisions. However, I want to emphasize that there is no disagreement that such inclusion will in no way impair the Commission's enforcement authority with respect to the standards we approve today.

In this same regard, Items 37 and 37a differ with respect to one of the General Duty Standards contained in the Draft General Order. GDS 4 addresses powerplant operation and maintenance practices that can in some instances be characterized as

physical or economic withholding for the purpose of raising prices. Based on the 100 Days' investigation, we know that this was a major problem during the Energy Crisis, and the Attorney General made it a centerpiece of his White Paper and his presentation to the State Senate last month.

FERC has attempted to address this problem by promulgating a "must offer" requirement, which the ISO may waive or excuse. In Item 37a we remit GDS 4 to the Committee for further consideration to assure that our actions in this area and FERC's are consistent and complementary. As the recent Reliant indictment should remind us, the incentives for anti-social behavior by the generators are great; the only deterrent for some is tough, effective sanctions. As the recent grid emergency events in California remind us, we are still vulnerable to gaming and manipulation. The Committee is the proper venue for the ISO and the CPUC to refine our respective approaches. We will take up GDS 4 promptly and send a refined approach back to the Commission.

While the rulemaking proceeding has progressed, CPSD has prepared well to be the Commission's principal agent in implementing and enforcing this new program. During 2003, CPSD created an Electric Generation Performance Branch headed by **Mark Ziering**, ably assisted by **Colette Kersten**. **Mark** also headed up the Commission's Generation Outage Study; I want to particularly commend him for his leadership and dedication to the goal of reliable electric service in California over the last three years.

In early 2003, CPSD filled most of the 18.5 new positions provided for implementation of this legislation (although about one third of the new staffers, and about a quarter of the total project staff, left under the threat of layoffs last summer). These staff have received specialized training in power plant operations, while developing the general orders, inspecting powerplants to get a baseline appreciation for their physical condition, and investigating forced outages in cooperation with the ISO. In addition, **Catherine Johnson** and **Charlyn Hook** have provided valuable guidance from the Legal Division. Under the Legislature's direction, the Commission has made a sizeable investment in the success of this program. We are ready to go once these Items are approved.

We do not expect the struggle to end here. The generators have made it clear in numerous filings and comments that they have fundamental objections to California's exercise of its authority and the Commission's exercise of jurisdiction in this area. Litigation will probably ensue. We will not be deterred in our efforts to protect the people of California under the direction of the Legislature.

This already lengthy presentation would be made longer by a detailed recitation of the contents of the General Orders contained in these Items. I am attaching a short summary prepared by ALJ **John Thorson** to the published version of this Statement.

I have mentioned a number of people who have been involved in the process of getting us to the point where we can approve these Items. There are many more people who have been involved in what is a major project for the Commission, with high expectations from the Legislature and the people of California. While I will not name you all here, I intend to send each of you a note of personal thanks for the work you have done. You have each made a little bit of history.

I will withdraw Items 35 and 37 and will vote for Items 35a and 37a.

SUMMARY OF ITEMS 25 AND 31

Standards to be Enforced

The proposed General Order will be the basic framework for implementing and enforcing all the standards and requirements adopted pursuant to SBx2 39. The General Duty Standards, Maintenance Standards, and (subject to a vote on the companion draft decision) Thermal Logbook Standards—all previously filed with the Commission—will be attached as appendices to the General Order and will become enforceable upon approval of the General Order. Once Hydro Logbook Standards and Operational Standards are filed and approved for enforcement by the Commission, they too will be appended to the General Order and enforced under it. The General Order also requires generators to comply with the ISO's Outage Coordination Protocol, as specifically required of the Commission by SBx2 39.

Generators Subject to the General Order

SBx2 39 specifically exempts many categories of electric generators from the standards: nuclear facilities, qualifying facilities (QFs), facilities maintained at a customer's site providing power exclusively to that customer, and certain publicly owned electric utilities or generating facilities.

Among the generators subject to the General Order are investor-owned electric utilities, Exempt Wholesale Generators (EWGs), and hydroelectric generating facilities (whether FERC-licensed or not). For administrative convenience, plants with a nameplate rating less than 50 MWs are exempt from logbook, maintenance, and other requirements. The draft decision indicates that, as a matter of intergovernmental comity, the General Order will not be enforced against federally licensed hydro facilities.

Basic General Order Approach

Enforcement under the General Order relies initially on the verified statements and certifications that generators submit to CPSD affirming that they are in compliance with logbook requirements and other standards. CPSD may request information (subject to confidentiality claims), conduct inspections, interview persons, and conduct tests to ensure the accuracy of these certifications and that the generators, in fact, are adhering to the standards and requirements.

In the case of violations, formal Commission proceedings may be initiated or the Commission may employ other remedies available to it under law. To reduce transaction costs for all involved, a consensual "scheduled fine" process may be used when violations are clearly documented. Despite the protestations of some, this is a very "mainstream" and straight-forward enforcement program.

Specific Issues

CPUC Jurisdiction

The draft decisions and General Order are premised, in part, on Commission jurisdiction over generating entities not recently subject to our concerns. Both draft decisions and the responses to comments clearly articulate our jurisdiction to enforce these standards against Exempt Wholesale Generators (EWGs) and federally licensed hydro facilities (although the draft

decision indicates that, except for logbook requirements, we will not actively enforce against such hydro facilities). Article 12, section 3, of our state constitution affirms that all these entities are subject to legislative control. In SBx2 39, the legislature has instructed that these generating entities be subject to operational and maintenance standards adopted by the Committee and enforced by the Commission. Federal law does not bar the imposition of state power plant standards on these entities. The Federal Water and Power Act of 1920 indicates that states may impose reasonable regulations on federally licensed hydroelectric power unless the state has failed to act. And the Public Utilities Act of 1935 specifically exempts from FERC jurisdiction “facilities for the generation of electric energy.”

Use of CAISO’s Tariff

It has been suggested that the Commission should work to have these standards incorporated into CAISO’s FERC-filed tariff and to rely on the enforcement of that tariff to provide assurances of proper power plant operations and maintenance. The decision asks our Executive Director to study this further and to report to us in six months, although the jurisdictional gap created by the Federal Power Act is a formidable obstacle. The legal and policy environment concerning CAISO’s FERC-filed tariff remains unsettled; and, because of its national mandate, FERC is often unable to give California’s energy problems the attention they deserve. In any event, the Legislature has directed that we not accept distant and uncertain remedies for what we can do for ourselves in ensuring the proper operation and maintenance of local power plants.

Delegation to Staff

To reduce transaction costs for both a generator and CPSD, the generator that may agree to a staff-imposed assessment for a violation of the order. But if the generator objects to the assessment, the issue will be heard in a formal proceeding before the Commission where we make the final agency determination. Our CPSD staff will be doing the type of work other Commission divisions have done in the past—and certainly the type of work the legislature intended us to do.

Confidentiality Provisions

Public Utilities Code § 583 requires us to resolve the ongoing tension between information that will be maintained as confidential and information that will be available to the public. The confidentiality provision of the proposed General Order reflect the special features of this program and our Legal Division’s experience with confidentiality issues over the years. This approach, fully protective of valid confidentiality and privilege claims, proposes that the balance we make under section 583 be shifted more in the direction of public access.